

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSEPHINE T BAILEY,

Plaintiff,

vs.

CIV 99-940 RLP/WWD

**OFFICERS L. TOWNSEND and
M. RUNYAN, in Their Individual and
Official Capacities, and THE CITY OF
ALBUQUERQUE,**

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendants' Motion for Partial Summary Judgment No. 2 (Docket No. 39), seeking dismissal of Plaintiff's claims alleging Fourteenth Amendment violation of rights to Procedural and Substantive Due Process. (Counts 3 & 4). Plaintiff has filed a Response (Docket No. 41), in which she states she cannot and does not oppose the motion.

THE COURT FINDS AS FOLLOWS:

1. The New Mexico Tort Claims Act, N.M. Stat. Ann. §41-4-1 *et seq.*, (Repl. Pamph. 1989), provides Plaintiff with an adequate post-deprivation remedy for the alleged deprivation of property which is the subject of her Complaint. Hudson v. Palmer, 468 U.S. 517, (1984); Zinermon v. Burch, 494 U.S. 113, 132 (1990); Lavicky v. Burnett, 758 F.2d 468, 473 (10th Cir. 1985), *cert. denied*, 474 U.S. 1101 (1986). Count Three of Plaintiff's complaint, alleging violation of her Fourteen Amendment right to procedural due process, should

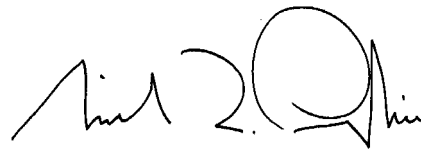
be dismissed with prejudice.

2. Plaintiff's claim of violation of her Fourteenth Amendment right to substantive due process fails to state a claim upon which relief can be granted. Wolford v. Lasater, 78 F.3d 484, 489-490 (10th Cir. 1996). Count Four of Plaintiff's Complaint should be dismissed with prejudice.
3. Plaintiff's motion to strike Defendants' affirmative defenses No. 1, 2, 3 and 6 has not been presented in the appropriate form, and will not be considered at this time.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. Count Three of Plaintiff's Complaint, alleging liability based upon deprivation of the Fourteenth Amendment right to procedural due process is hereby dismissed with prejudice.
2. Count Four of Plaintiff's Complaint, alleging liability based upon deprivation of the Fourteenth Amendment right to substantive due process is hereby dismissed with prejudice.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', is written above a horizontal line.

**RICHARD L. PUGLISI
UNITED STATES MAGISTRATE JUDGE
(sitting by designation)**